

E10FREES

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 CR 629 (VM)

5 CHRISTOPHER REESE,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 24, 2014
9:30 a.m.

10 Before:

11 HON. VICTOR MARRERO,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the
Southern District of New York

16 MICAH SMITH

17 Assistant United States Attorney

18 ALLAN HABER

19 Attorney for Defendant

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1 (Case called)

2 (In open court)

3 THE COURT: This is a proceeding in the matter of
4 United States v. Christopher Reese, docket number 12 CR 629 and
5 it is scheduled as the sentencing of the defendant in this
6 matter. Counsel, please enter your appearances for the record.

7 MR. SMITH: Good morning, your Honor. Micah Smith for
8 the government with me at counsel table is Melissa Vermeer, an
9 intern with the United States Attorney's Office.

10 MR. HABER: Good morning, your Honor, Alan Haber for
11 the defendant.

12 THE COURT: The Court notice the defendant is seated
13 next to his attorney. I've read and reviewed the presentence
14 report dated July 25, 2013 prepared in connection with the
15 sentencing of Mr. Reese. I also read the memorandum from
16 defense counsel dated October 16, 2013 and the memorandum from
17 the government dated December 13, 2013. I'm sorry, counsel's
18 memo is October 16, 2013, the government's memo December 13,
19 2013 and the supplemental memorandum from defense counsel dated
20 January 18, 2014.

21 Mr. Smith has the government read and reviewed the
22 presentence report?

23 MR. SMITH: Yes, your Honor.

24 THE COURT: Does the government have any objections to
25 the report to raise at this point?

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1 MR. SMITH: Your Honor, we don't have any objections.
2 We do have a couple of places where we would submit that the
3 calculation should be different, at least in one respect that
4 difference is not actually a disagreement just that the
5 presentence report deferred a determination and then the
6 presentence report also doesn't take a position on the other
7 issue that we briefed and in particular one is whether the
8 obstruction of justice enhancement should apply. The PSR
9 expressly notes that it will defer the Court's determination on
10 that and then secondly the PSR doesn't take a position on
11 whether there should be an upward enhancement of the criminal
12 history category.

13 THE COURT: Thank you. Those matters are laid out in
14 your memorandum and I have reviewed them and considered them.

15 Mr. Haber have you read and reviewed the presentence
16 report?

17 MR. HABER: I have, your Honor. Other than the
18 objections that were filed by Mr. Reese before I became
19 counsel, we don't have any additional remarks other than what
20 was in our memo.

21 THE COURT: All right. Thank you.

22 Mr. Reese, please rise. Have you read and reviewed
23 the presentence report?

24 THE DEFENDANT: Yes, I have, your Honor and discussed
25 it with counsel.

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1 THE COURT: Have you had an opportunity to discuss it
2 with your attorney?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: Thank you. Be seated. On March 29, 2013
5 Mr. Reese was found guilty by a jury on Counts One, Two, Three
6 and Four of indictment S2 12 CR 629, which charged him with
7 conspiracy to commit bank fraud in violation of 18, United
8 States Code 1349, a class B felony; bank fraud in violation of
9 18, United States Code, Section 1344, also a class B felony;
10 conspiracy to commit wire fraud in violation of 18, United
11 States Code Section 1349, a class C felony and aggravated
12 identity theft in violation of 18, United States Code Section
13 1028A, a class E felony.

14 Mr. Smith does the government have any additional
15 comments in connection with today's sentencing?

16 MR. SMITH: No, your Honor. We set forth our position
17 in our submissions.

18 THE COURT: Mr. Haber do you have any additional
19 comments in connection with the sentencing of Mr. Reese?

20 MR. HABER: Your Honor, other than, I think we have a
21 pretty full record here. There's been a lot of correspondence
22 and a lot of filings the. Other than the fact that if we look
23 at the whole package rather than just the trial transcripts I
24 think we see we can take a different view of whether or not, I
25 think the big issue here is whether or not Mr. Reese will

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1 recidivate again when he gets out. I think there are certainly
2 a number of factors that need to be considered by the Court.
3 Of primary interest, at least to me and I believe to Mr. Reese,
4 is his medical condition which is well documented. I don't
5 think that he -- I think as probation suggests, a 14 year
6 sentence would be comparable to a death sentence to him given
7 his fragile medical condition.

8 I also know that Mr. Reese sent a letter to the Court,
9 I don't know whether or not that was mentioned in your opening
10 statement, about what motivated him and what brought him to do
11 what he has done repeatedly in his younger life, and there's
12 certainly no excuse for what he did but I think it puts it into
13 a different perspective and hopefully the Court will give that
14 some consideration as well.

15 I also note that Mr. Reese had sent a letter to the
16 Court and asked that it be filed under seal which I assume, I
17 believe that the Court granted because I haven't seen it on
18 ECF, and I would ask the Court to take that into consideration
19 as well when sentencing him.

20 He obviously has made some bad, poor choices in his
21 life and I've had a lot of discussions with him during the
22 rather short period that I represented him. He's a very bright
23 individual, maybe in an aggressive way that doesn't show his
24 favorable light, but he's extraordinarily bright and he's
25 wasting his life away doing what he's been doing. He has

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1 potential. I've represented many people in this courtroom, in
2 this courthouse, and it's rare that you find an individual that
3 can think legally and write as well as he does, given his
4 minimal education.

5 So I would ask the Court to take all of that into
6 consideration when sentencing him and draw attention
7 specifically to one of the issues in my original sentencing
8 letter requesting that the Court grant an application to allow
9 him to stay in the MCC for 90 days so that he can confer with
10 an appeals lawyer. There's a dual reason I think for this
11 request. One is medical. There are certain medical treatments
12 that he gets at the MCC that I don't believe are available in
13 the MDC and normally when someone is sentenced they immediately
14 move the defendant to the MDC. So we would ask that the Court
15 grant that application to keep him at the MCC for 90 days after
16 his sentencing today.

17 Other than that, I have no other applications, your
18 Honor.

19 THE COURT: All right. Thank you. Let me note for
20 the record that the Court received and considered a letter Dade
21 December 10, 2013 as well as a sealed letter or document dated
22 December 16, 2013, both from Mr. Reese.

23 Mr. Reese, please rise. Is there anything you would
24 like to say in your behalf before the Court imposes sentences?

25 THE DEFENDANT: Other than what's in my December 10

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1 and December 16 I believe it is letter, I have nothing to say,
2 your Honor. Thank you.

3 THE COURT: Thank you. Be seated.

4 In accordance with the decision by the United States
5 Supreme Court in United States v. Booker, while the United
6 States sentencing guidelines are not mandatory, the Court
7 nonetheless must consult those guidelines and take them into
8 account when sentencing. Therefore the Court has considered
9 the findings of fact stated in the presentence investigation
10 report as well as the guidelines analysis and the
11 recommendations contained therein. The Court has weighed this
12 information along with the factors listed in Section 18, United
13 States Code, 3553 in coming to its final sentencing decision in
14 this case. The Court adopts the factual recitation in the
15 presentence investigation report. I have considered the
16 government's arguments that an enhancement should be granted
17 for obstruction of justice on an upward adjustment for criminal
18 history. I am not persuaded that either of those two actions
19 are called for in this case. Therefore, I am denying the
20 government's request for adjustments on those two scores.

21 In other respects the Court adopts the factual
22 recitation and the analysis in the report. Therefore the Court
23 finds that under the guidelines Mr. Reese's offense level
24 amounts to 27 and his criminal history category falls into
25 category IV. The recommended range of imprisonment for that

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1 offense level and criminal history category is 100 to 125
2 months' imprisonment followed by a mandatory 24 months'
3 imprisonment to run consecutively with respect to Count Four.

4 Mr. Reese is found guilty of conspiracy to commit bank
5 fraud, bank fraud, conspiracy to commit wire fraud and
6 aggravated identity theft. The probation office has
7 recommended that the Court impose a sentence of 125 months for
8 Counts One, two, three, and 24 months on Count Four to run
9 consecutively to the sentence imposed on Counts One, two and
10 three.

11 MR. SMITH: Your Honor, if I might add one
12 qualification. The government reviewed Mr. Reese's most recent
13 supplemental submission. In that submission he makes one
14 argument that we don't disagree with, which is that unlike his
15 co-defendants who were not convicted of aggravated identity
16 theft, Mr. Reese was and so in calculating the offense level
17 for his underlying offenses the two-level enhancement for using
18 authentication features we think should not apply. And the
19 reason for that is although the commentary in Section 2B1.6
20 refers to means of identification whereas this enhancement here
21 is based on authentication features being used, the specific
22 authentication features that were used in this case also
23 qualify as means of identification. And so for that reason we
24 don't oppose Mr. Reese's specific argument with respect to that
25 2 point enhancement. We otherwise disagree with all the other

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1 arguments he made in that supplemental submission.

2 THE COURT: Is that statement, Mr. Smith, is that
3 statement consistent with your argument in your sentencing
4 memorandum about the authentication?

5 MR. SMITH: It's not, your Honor. So we are --
6 essentially the way that this developed is Mr. Reese initially
7 objected to the authentication feature enhancement on the
8 ground that his offense didn't involve the use of
9 authentication features and so the government's submission
10 simply responded to that argument and said that it did. So
11 we'd agree with the probation office that this enhancement
12 should apply.

13 Mr. Haber in his supplemental submission points out
14 that at least in a case involving an aggravated identity theft
15 count, application note Section 2B1.6 says that this particular
16 enhancement is already accounted for in the sentence that's
17 imposed under Section, 18, United States Code, Section 1025A.

18 THE COURT: What implications would that have for the
19 guidelines range computation?

20 MR. SMITH: Your Honor, we any that that argument
21 would only apply to the two-level enhancement for the use of
22 authentication features so it would reduce the offense level by
23 two points. Otherwise it would have no effect. In particular,
24 Mr. Haber argues that victims whose identities were used should
25 not count under that same application note we don't think the

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1 argument can extend that far because the application note makes
2 clear that what it's referring to is the two-level enhancement
3 for the use, possession or transfer or other means of
4 identification and that's the specific offense characteristic
5 that's being referred to and that enhancement doesn't apply.
6 But otherwise we think that all the other enhancements
7 discussed in the PSR are appropriate, even with the
8 acknowledgment that we make now.

9 THE COURT: My question is does that affect the 27
10 offense level that the probation department calculated?

11 MR. SMITH: It does, your Honor. It would bring the
12 level down to 25.

13 THE COURT: And then the question is what does that do
14 to the guidelines range which is now 100 to 125.

15 MR. SMITH: It would bring it down to 92 to 115, to be
16 followed by the mandatory two year sentence.

17 THE COURT: Mr. Haber, did you wish to address this
18 point?

19 MR. HABER: Your Honor, I'm assuming if you reduce it
20 to a level 25 and criminal history category IV the category is
21 84 to 105 months, we're on the same page there?

22 MR. SMITH: That's correct, your Honor, 84 to 105 to
23 be followed by the mandatory term of imprisonment under Section
24 1028A.

25 THE COURT: All right, thank you.

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1 All right, in light of the government's representation
2 and its withdrawal of its earlier argument with regards to this
3 particular two-level enhancement, the Court adopts the position
4 that has been articulated and finds that in this case,
5 therefore, the offense level should be 25 and criminal history
6 category of IV and that would yield, as has been represented, a
7 guidelines range of 84 to 105 months on Counts One, two and
8 three followed by 24 months consecutive sentence on Count Four.

9 Subsection A1 of 18, United States Code, Section 3553
10 requires that Courts take into consideration the nature and
11 circumstances of the offense and the history and
12 characteristics of the defendant, subsection 2 of Section 18,
13 United States Code, 3553 requires the Court to consider the
14 need to promote certain objectives of the criminal justice
15 system mainly punishment, general deterrence and
16 rehabilitation. Section 3553(a) the Court is to consider the
17 need to avoid unwarranted sentencing disparities among
18 defendants with similar records and similar offenses in other
19 cases as well as in the case at hand.

20 Mr. Reese, please rise. Taking into account the
21 nature and circumstances of the offense and the history and
22 characteristics of the defendant and considering all the
23 factors listed in Section 18, United States Code, 3553(a) the
24 Court finds that a sentence of 84 months of imprisonment on
25 Counts One, two and three and 24 months consecutive

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1 imprisonment on Count Four is reasonable and appropriate and
2 that such a term or terms are sufficient but not greater than
3 necessary to promote the proper objectives of sentencing.

4 Mr. Reese upon your release from imprisonment you
5 shall be placed on supervised release for a term of three years
6 on Counts One, two and three and one year on Count Four.
7 Counts One, two and three to be served concurrently and Count
8 Four consecutive. So it will be four years. Let me again
9 underscore that on Counts One, two and three the 84 month term
10 is to run concurrently.

11 I will not impose a fine because the Court has
12 determined that you do not have the ability to pay a fine.
13 However, you are ordered to pay restitution in the amount to be
14 determined to such persons as identified by the government as
15 having been the victims of your crimes. These individuals have
16 suffered injuries compensable under the victim and witness
17 protection act in the amounts preliminarily noted by the
18 government. No further payment shall be required until the sum
19 of the amounts actually paid by all of the defendants is
20 determined. Mr. Smith, under the guidelines you have 90 days
21 to submit the restitution payment schedule and victims.

22 MR. SMITH: Yes, your Honor. And I've spoken with
23 Mr. Haber about those numbers. I think we do have an agreement
24 on exactly what they are and I'll be submitting the proposed
25 order for the Court's consideration.

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1 THE COURT: Thank you. Any payments by the defendant
2 shall be divided among the persons named in proportion to their
3 compensable injuries. Restitution shall be paid in monthly
4 installments of 15 percent of gross monthly income over the
5 period of the supervision to commence 30 days after the release
6 from custody.

7 Mr. Reese you shall notify the United States Attorney
8 for this district within 30 days of any change of mailing or
9 residence address that occurs while any portion of the receipts
10 Constitution remains unpaid. You are also ordered to pay to
11 the United States a special assessment of \$400 which shall be
12 due immediately.

13 Mr. Smith, is there any forfeiture provision in this
14 case?

15 MR. SMITH: Yes, there is, your Honor, and the amount
16 of proceeds involved here was \$176,000. I don't think there's
17 any objection to that amount.

18 MR. HABER: I think we need to see the numbers before
19 we agree to that. Do we have a calculation?

20 THE COURT: Why don't you work that out with the
21 government, and Mr. Smith when you have a forfeiture order with
22 an agreed amount you may submit it. If there's a disagreement
23 then we can call a conference to discuss the matter.

24 MR. HABER: That's fine.

25 THE COURT: Mr. Reese you must supply with standard

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1 conditions 1 through 13 of supervised release and the following
2 manned today tier conditions. You shall not commit another
3 federal, state or local crime. You shall not illegally possess
4 a controlled substance. You shall not possess a firearm or
5 destructive device. You shall cooperate in the collection of
6 DNA as provided by the probation officer. The mandatory drug
7 testing is suspended based on the determination by the Court
8 you provide a low risk of future substance abuse.

9 In addition, Mr. Reese, you shall comply with the
10 following special conditions:

11 You shall provide the probation officer with access to
12 any requested financial information. You shall commit your
13 person, premises, place of business or vehicle or any premises
14 under your control to a search on the ground that the probation
15 officer has reason to believe that contraband or evidence of a
16 violation of the conditions of release may be found. The
17 search must be conducted at a reasonable time and in a
18 reasonable manner. Failure to submit to search may be grounds
19 for revocation. You shall inform any other residents that the
20 premises may be subject to search pursuant to this condition.

21 Mr. Smith, do you understand each of these conditions?

22 MR. SMITH: I do, yes, your Honor.

23 THE COURT: I'm sorry, Mr. Reese.

24 THE DEFENDANT: I didn't respond because --

25 THE COURT: I'm sorry. Mr. Reese, do you understand

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1 each of these conditions?

2 THE DEFENDANT: I do.

3 THE COURT: I take it for granted the government
4 understands them.

5 The Court recommends that you be supervised by the
6 district of residence. The sentence as stated is imposed.
7 Mr. Reese to the extent you have the right to appeal your
8 sentence and you are unable to pay the cost of your appeal you
9 have the right to apply in forma pauperis meaning as a poor
10 person. If you make such a request the clerk must prepare and
11 file a notice of appeal on your behalf. Do you understand your
12 rights as it may exist?

13 THE DEFENDANT: I do, your Honor.

14 THE COURT: Thank you. Mr. Haber requested that the
15 Court recommends that Mr. Reese be held in custody at the MCC
16 pending for 90 days. The Court will so recommend. Mr. Smith,
17 are there remaining counts or underlying indictments that need
18 to be dismissed at this time?

19 MR. SMITH: There are not, but out of an abundance of
20 caution we would move to dismiss.

21 THE COURT: All right, thank you. Is there anything
22 else from the government?

23 MR. SMITH: Nothing, your Honor.

24 THE COURT: Anything else, Mr. Haber?

25 MR. HABER: No, thank you, your Honor.

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1 THE COURT: Thank you and have a good day and a good
2 weekend.

3 (Adjourned)